

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-004

Complainant: No. 1353310099A

Judge: No. 1353310099B

ORDER

The commission reviewed the complaint filed in this matter and determined that the proper remedy was to dismiss the case and issue a private warning to the judge. Although the judge apologized to the complainant and her attorney, Canon 3B(4) requires a judge to be patient, dignified and courteous at all times.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: June 23, 2009.

FOR THE COMMISSION

\s\ William Brammer

Commission Chair

Copies of this order were mailed
to the complainant and the judge
on June 23, 2009.

This order may not be used as a basis for disqualification of a judge.

JAN 07 2009

January 4, 2009

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

Re: Complaint Against the Honorable
Superior Court Division One

Dear Sir or Madam:

For the following reasons, I believe that the Honorable
Division 1 Judge of the
Superior Court, has violated the following Canons of the Code
of Judicial Conduct:

Canon 3(B)(4) - A judge shall be patient, dignified and
courteous to litigants, jurors, witnesses, lawyers . . .

Canon 3(B)(5) - A judge shall perform judicial duties without
bias or prejudice. A judge shall not, in the performance of
judicial duties, by words or conduct manifest bias or
prejudice, including but not limited to bias or prejudice
based upon race, sex, religion, national origin, disability,
age, sexual orientation or socioeconomic status . . .

Canon 3(B)(7) - A judge shall accord to every person who has a
legal interest in a proceeding, or that person's lawyer, the
right to be heard according to law . . .

Canon 3(B)(8) - A judge shall dispose of all judicial matters
promptly, efficiently and fairly.

Canon 3 (E)(1)(a) - A judge shall disqualify himself or
herself in a proceeding in which the judge's impartiality
might reasonably be questioned . . . (a) the judge has a
personal bias or prejudice concerning a party or a party's
lawyer . . .

I have numerous examples of Judge [redacted] violations of the aforementioned Canons, and have attached proof of some of the most recent. I have practiced family law and litigated matters in Judge [redacted]'s courtroom for six years, but the last two years have seen a steady decline in his demeanor and mannerisms when handling my cases. My clients' cases and my relationship with my clients have been detrimentally affected because of Judge [redacted]'s behavior. Because of Judge [redacted]'s conduct, I feel that I can no longer effectively represent any client in his courtroom and I have declined to accept new cases that are presently assigned to his courtroom. One of my last hearings in his courtroom is the latest example of Judge [redacted]'s judicial conduct in my cases.

On October 27, 2008, I appeared with my client for an Order to Appear hearing in Cause No. [redacted]. I represented the wife in a post-decree contempt matter and [redacted] represented the husband. Both parties filed their contempt petitions on the same day, with the husband's petition being filed first. The husband's petition outlined numerous allegations of contempt, while my client's petition consisted of one allegation. The main issue pertained to the parties' marital residence that has been listed for sale for several years and has not sold. One of the terms of the parties' decree required several construction defects be remedied before the house was sold. The construction defect litigation was separate from the divorce proceedings and has since long concluded. I have attached a copy of the transcript of this hearing.

Mr. [redacted] presented his opening statement, which consisted of 12 ½ pages of the transcript in which neither I nor Judge [redacted] interrupted. (Transcript, page 4, line 16 to page 16, line 21). I proceeded to give my opening statement and had not spoken for more than a page and a half before Judge [redacted] interrupted, asking questions that I would have answered had I been able to complete my opening statement, completely interrupting my opening argument, and taking the matter in a different direction. (Transcript, page 16, line 24 to page 18, line 16). Judge [redacted] also allowed opposing counsel to interject his comments into my opening statement. (Transcript, page 19, line 12 to page 24, line 14). Judge [redacted] asked where were the experts and that we "better darn well have an expert" even though the construction defects were not an issue for the hearing. (Transcript, page 22, line 14 to page 23, line 22).

After bantering from both the judge and opposing counsel I mentioned I was just doing my opening statement and Judge [redacted] told me to finish my opening statement and then he immediately proceeded to chastise both counsel and the parties

for being in his court. (Transcript, page 24, line 11 to page 25, line 10). At the conclusion of Judge 's remarks, I had completely lost my train of thought, but proceeded for another half page of the transcript before Judge interrupted me again. This time Judge stated that all of is a residential estate area other than those that are commercial, which is a false statement. (Transcript, page 26, lines 3-6). I was finally allowed to complete my opening statement, although again with interruptions from both the judge and opposing counsel. After more questions from the judge and interruptions by opposing counsel, the proceedings broke so that Mr. could speak with his client who was appearing telephonic in private.

When the proceedings recommenced, Mr. called my client. (Transcript, page 39, line 23 to page 63, line 10). During my cross examination of my client, discussion ensued over the exchanging of exhibits. (Transcript, page 67, line 20 to page 70 line 23). When I avowed that I had not received Mr. 's exhibits, Judge again chastised both counsel, actually pointing his fingers over the bench at both counsel. (Transcript, page 69, lines 9-16). It was finally determined that Mr. sent his exhibits to the wrong address, hence the likely reason I did not receive them.

While I was setting up a follow-up to a question posed to my client in her direct examination by opposing counsel, Judge once again interrupted my question. This time Judge made an angry remark asking if we thought he was stupid. (Transcript, page 73, lines 5-23). The remark is borne out more by the tone of his voice and the look on his face. I immediately closed my trial notebook and requested a break in the proceedings, citing I could not continue. Judge completely dismissed my remarks and called on opposing counsel to redirect my client. (Transcript, page 73, line 24 to page 74, line 1). By this time I was completely unsettled.

The proceedings continued whereby Mr. examined his client and I commenced with cross examination. (Transcript, page 74, line 6 to page 92, line 10). The proceedings broke for a short time in order for the court to take up another matter. Upon returning, I continued my cross examination. (Transcript, page 92, line 20). During my cross examination, Judge started asking the witness his own questions. (Transcript, page 97, line 4 to page 116, line 7). Judge was also asking questions of my client, who was sitting next to me. As my client started to answer one of his questions, Judge told her to "keep it simple, Sweetie." (Transcript, page 105, lines 2-15). My client was

appalled by his inappropriate statement, which Judge must have sensed from the look on her face, as he attempted to retract his statement. (Transcript page 105, line 23 to page 106, line 3. By this time both my client and I were entirely dismayed with the manner the proceedings were handled by the judge, which has caused my client to file her own judicial complaint.

The aforementioned is merely a glimpse of the manner in which Judge maintains his courtroom during my cases. I have several other cases and transcripts reflecting the same conduct.

Other very recent examples in which I believe that Judge has violated the Canons of the Code of Judicial Conduct are:

1. On August 27, 2008, I filed a 10 page post-decree ex parte and expedited Petition for Order to Appear Re: Civil Contempt in Cause No. . In mid October my legal assistant called the court's judicial assistant to inquire as to the status of the case, as no hearing had been set. She was verbally informed that Judge had issued a minute order dated August 28, 2008, that required me to serve the opposing party with notice and the petition, citing Rule 91 of the Arizona Rules of Family Law Procedure, prior to setting the matter for hearing, and allowing a response time, even though no response is required under Rule 91(M). There is nothing in said rule of such requirement, and in fact service is not necessary until after the Order to Appear is signed by the judge, in which case service of the petition and order to appear etc are to be served ten days prior to the hearing pursuant to Rule 91 (L). Even so, I mailed the petition to the opposing party and filed An Affidavit of Mailing on October 16, 2008. Said minute order was sent to my previous office that was vacated nearly two years earlier, and not received by me until October 20, 2008, after I inquired as to the status. It was also on October 20, that I received the court's second minute order dated October 7, 2008, that was also sent to my previous address. Said minute order stated Judge took no action on the file as the Petition had not been served on the opposing party. When my legal assistant called Judge 's court to inquire as to where the rule requiring service of the petition is required before setting a hearing could be found, she was told that Judge would not provide me with the information and that he expects attorney's to know the rules. Yet I personally

know that Judge [redacted] has provided information to another attorney when requested. On November 12, 2008, I filed a Request to Set Hearing, setting forth the above details. Judge [redacted] issued a minute order dated November 12, 2008, setting the matter for a 30 minute hearing. Because of the time constraint I had to file a motion to continue. Copies of the aforementioned documents are attached.

2. I filed a post-decree Petition for Order to Modify Child Custody, Parenting Time and Child Support on October 8, 2008, in Cause No. [redacted]. Judge [redacted] issued a minute order dated October 21, 2008, declining to set a hearing for alleged lack of compliance with Rule 47(A)(1) and (2) of the Arizona Rules of Family Law Procedure, along with non-filing of a parenting plan or parent's worksheet. On October 18, 2008, I filed a Notice of Filing Parent's Worksheet that was inadvertently not attached to the petition. I also noted that Rules 47(A)(1) and (2) were not applicable, as my filing was a post-decree matter, and not relevant to the rules pertaining to pre-decree temporary orders. Additionally, I pointed out that while the applicable rules do not identify the requirement of a parenting plan, said parenting plan was included in the body of the petition. Judge [redacted] set the matter for a 30 minute hearing. Counsel for the opposing party submitted a Request for Production of Documents, and I filed an Objection. In ruling on the matter, Judge [redacted] issued another minute order dated December 10, 2008. In said minute order, Judge [redacted] sua sponte vacated the 30 minute hearing, citing my failure to specify the amount of time necessary for the hearing. According to Rule 91(A)(1), estimation for the time of the hearing is to be included in the petition, not the Order to Appear as stated by Judge [redacted], and in my petition I estimated the time for trial to be one-half day. In vacating the hearing, Judge [redacted] further states that he is well aware that the hearing cannot be completed in 30 minutes as to the issues presented in the petition. I question why he would have set it for a 30 minute hearing in October, knowing that it could not be completed within the time frame, further delaying the matter and causing my client to incur additional unnecessary expenses. Copies of the aforementioned documents are attached.

3. Another example is found in Cause No. [redacted]. I filed a Petition for Order to Appear Re: Modification of Parenting Time and Child Support on June 25, 2008. Judge [redacted]

issued a minute order dated July 15, 2008, citing deficiencies, declining to set a hearing, and requiring service of the Petition and expiration of time to respond before setting a hearing. On August 5, 2008, I filed an amended Petition, addressing the deficiencies. On August 20, 2008, Judge issued a second minute order, taking no action on the Petition until it is served, and allowing time to respond. Again, there is no such requirement. On September 3, 2008, Judge issued a minute order setting the matter for a 30 minute hearing, even though I estimated time of trial to be one-half day. Because my client had to travel from California, I filed a motion to continue, as 30 minutes was not enough time to hear the issues, further delaying the matter and causing my client to incur additional unnecessary expenses. Copies of the aforementioned documents are attached.

4. On February 29, 2008, I filed a Notice of Conflict on three cases, in that I had a change of plea hearing scheduled for 8:30 a.m. in , an oral argument on a Motion to Compel scheduled for 10:00 a.m. in before Judge , and a trial scheduled for 11:00 a.m. in , all scheduled on April 10, 2008. Judge issued a minute order dated March 6, 2008, finding no conflict existed as the hearings were all set for different times (notwithstanding they were all three in different cities in County). Said minute order set forth suggestions for appearing in at 8:30 a.m. (provided court started on time), travel to and appear in the matter telephonically at 10:00 a.m., and then handle the matter at 11:00 a.m. I filed a Motion to Reconsider on March 12, 2008, setting forth my clients' desires to have me present for both the and matters, and their entitlement to effective assistance of counsel, along with my own desire to appear personally in each proceeding. The matter was no longer an issue as I was able to accelerate the matter. The Motion for Reconsideration was denied. Copies of the aforementioned documents are attached.
5. Judge has also exhibited facial expressions and body movement that are not conducive to proper judicial conduct such as rolling his eyes at me and my clients, literally yelling at me during proceedings, his face gets beet red and his eyes flash with anger, along with the finger pointing as previously mentioned. I have also witnessed Judge rub his temples, as if saying the proceedings were giving him a headache.

The aforementioned examples are just samples of Judge _____'s conduct that I have endured for over two years and I feel I can no longer effectively practice in his court. I do not find his conduct becoming of an elected judicial officer. His behavior has detrimentally affected me and my practice, along with my clients. I cannot even prepare for a hearing in his court, dreading the tirade and embarrassment that he causes me and my clients. Submitting this complaint has been a very difficult decision for me, but one I feel must be addressed. I have enclosed statements from two clients in support of their negative experiences in Judge _____'s court. I am currently conversing with a former client whose ex-spouse is so clearly in contempt of the court ordered decree in which both she and her children are financially detrimented to the point that their house is being foreclosed on. Even so, this client declines to return to court to rectify the situation due to Judge _____'s harsh comments and his conduct in previous proceedings. No litigant should be fearful of the judicial system, and in particular to one judge, to the point that they cannot utilize the legal or judiciary services when necessary.

I would like to thank the Judicial Commission for its time in reviewing this matter. I am available to answer any questions and/or provide any additional documentation you may need.

Sincerely,